

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TONY RAY LARSON,)
)
Plaintiff,)
)
v.)
)
DR. McCURDY; DR FISHER;)
JIM FARRIS, Warden; GENESE)
McCOY; TAMARA HILL, CHSA;)
EDWARD EVANS, Interim)
Director,)
)
Defendants.)

CIV-14-62-R

ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 alleging violation of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Suzanne Mitchell for preliminary review. On March 18, 2014, Judge Mitchell issued a Report and Recommendation wherein she recommended that the action be dismissed without prejudice, because Plaintiff had failed to respond to her order dated February 12, 2014, instructing him for the second time to cure deficiencies in his Motion for Leave to Proceed *In Forma Pauperis* and granting him until March 5, 2014 to cure the deficiencies. Plaintiff has filed a timely objection to the Report and Recommendation wherein he contends that he never received the February 12, 2014 order. The Court has conducted a *de novo* review, as required by Plaintiff's objection, and finds as follows.

When Plaintiff submitted his second application for leave to proceed *in forma pauperis*, on February 11, 2014, he included a certification from the institution where he is

confined and a copy of his account. At the time of the filing of this action, Plaintiff had \$389.50 in his mandatory savings account, as established by the statement dated February 7, 2014. Therefore, the Court finds Plaintiff is entitled to proceed without prepayment of the full filing fee, and to that extent his motions are granted. However, pursuant to 28 U.S.C. §1915(b)(1), Plaintiff shall be required to pay the full \$350 filing fee as set forth hereafter.

IT IS HEREBY ORDERED that on or before the 22nd day of April, 2014, Plaintiff pay an initial partial filing fee of \$77.90, which represents 20 percent of the greater of the (1) average monthly deposits, or (2) average monthly balance in Plaintiff's prison accounts for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. §1915(b). Plaintiff is advised that unless by the date specified above he has either (1) paid the initial partial filing fee, or (2) shown cause in writing for the failure to pay, this action will be subject to dismissal without prejudice to refiling, and no fees or costs will be imposed or collected. Moreover, Plaintiff may voluntarily dismiss this action in accordance with Fed.R.Civ.P 41(a) on or before the 22nd day of April , 2014, without incurring any fees or costs.

IT IS FURTHER ORDERED that after payment of the initial partial filing fee, Plaintiff shall make monthly payments of 20 percent of the preceding month's income credited to his prison account(s) until he has paid the total filing fee of \$350. 28 U.S.C. § 1915(b)(2). This Court will enter an order directing the agency having custody of Plaintiff to collect and forward such monthly payments to the Clerk of the Court each time the institutional account balance(s) exceed(s) \$10.00 until the filing fee is paid in full. 28 U.S.C.

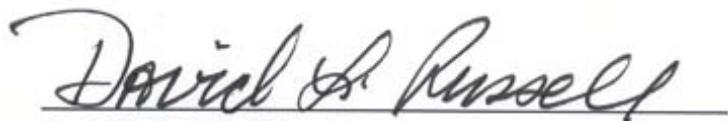
§ 1915(b)(2). Interference by Plaintiff in the submission of these funds shall result in the dismissal of this action.

Plaintiff is advised that notwithstanding any filing fee, or any portion thereof, that may have been paid, the Court shall dismiss at any time all or any part of such complaint which (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§1915A; 1915(e). Plaintiff is further advised that such monthly payments will continue to be collected until full payment of the filing fee has been received by the Court even after disposition of the case and regardless of whether relief is granted or denied.

IT IS FURTHER ORDERED that the Clerk of the Court shall not issue process until further order of the Court, and the Clerk shall send a copy of this order to the agency having custody of Plaintiff.

For the reasons set forth above, the Court declines to adopt the Report and Recommendation.

IT IS SO ORDERED this 2nd date of April, 2014.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE